



Federal Communications Commission
Washington, D.C. 20554

DA 04-3455

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Facility I.D. No. 30576

In reply refer to: 1800E2-KH

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

WBDC Broadcasting, Inc.
Licensee, Station WBDC-TV
2121 Wisconsin Avenue, NW
Suite 350
Washington, DC 20007

Dear Licensee:

This refers to your license renewal application for station WBDC-TV, Washington, DC (BRCT-20040601AYY).

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also reaffirmed and clarified its long-standing policy against "program-length commercials." The Commission defined a "program-length commercial" as "a program associated with a product, in which commercials for that product are aired," and stated that the entire duration of any program-length commercial would be counted as commercial matter for the purpose of the children's television commercial limits. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

On June 1, 2004, you filed the above-referenced license renewal application for station WBDC-TV. In response to Section IV, Question 5 of that application, you certify that, during the previous license term, station WBDC-TV failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19 to that application, you indicate that station WBDC-TV violated the children's television commercial limits and policies on two occasions between November 16, 1999, and

April 15, 2004, and describe the corrective measures taken subsequently to prevent future violations. You state that one conventional overage was 45 seconds in duration and the other one was 30 seconds in duration. You attribute the two conventional overages to formats or errors which occurred in the programming supplied by the station's national television network, The WB Network ("WB Network").

You also indicate that, in your view, another instance did not constitute a commercial overage, but that you nonetheless reported it in your quarterly certification as a matter of prudence and full disclosure.¹ You state that this incident occurred on September 24, 2002, when station WBDC-TV aired a WB Network commercial for the Nintendo GameBoy E-Reader, during the "Pokemon" program. You assert that station WBDC-TV was not warned, and did not know until after broadcast, when WB Network brought the matter to the licensee's attention, that the commercial contained a "fleeting, obscured image" of a "Pokemon" game card. You state that, the image, in which only the letters "MON" are visible for just over one second, does not depict any "Pokemon" character. According to your description, the "Pokemon" card appears as three of six cards arranged in the shape of a fan during the display and "Pokemon" is not mentioned in the audio of the commercial. You maintain that the program-length commercial policy is inapplicable in this case because there is no likelihood that children would perceive any linkage between the "Pokemon" program and the GameBoy commercial. Further, you contend that the WB Network expressed its belief that the GameBoy commercial does not violate the Commission's rules or policies of the Children's Television Act's commercial time limits. You argue that this "brief" display of three letters from the word "Pokemon" in a commercial for an unrelated product in a quickly moving video display that contains no reference to "Pokemon" does not violate the Commission's rules. Although disclosure is not legally necessary in this case, you assert, you are nevertheless reporting this incident because the WB Network brought the matter to Station WBDC-TV's attention and you prefer to document your compliance efforts concerning advertising in children's programs. Finally, you state that Station WBDC-TV wishes to avoid any question regarding this issue, and consequently, the licensee has adopted a policy to ensure that the E-Reader commercial will not air in the future in or adjacent to the "Pokemon" program.

As a preliminary matter, we note that Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989). Thus, in *Children's Television Programming*, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children's television commercial limits, stating that the program-length commercial policy "directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and

¹ You report that, pursuant to grant of an assignment application, Tribune Company, the ultimate corporate parent of WBDC Broadcasting, Inc., became the ultimate owner of WBDC-TV on November 16, 1999. Moreover, you state that, as part of the assumption of control, WBDC assumed responsibility for a reporting condition imposed in the station's renewal of license, requiring it to submit quarterly certifications concerning station WBDC-TV's compliance with the limits on commercial matter set forth in Section 73.670 of the Commission's rules.

commercial matter.”² 6 FCC Rcd at 2118. Accordingly, in interpreting and applying the Commission’s policies regarding program-length commercials, we are concerned about and dealing with the cognitive abilities of young children, not adults. *See, e.g., Scripps Howard Broadcasting Company (KNXV-TV)*, 12 FCC Rcd 19504, 19505 (MMB 1997), *aff’d* 9 FCC Rcd 2547 (MMB 1994).

With this in mind, we disagree with WBDC Broadcasting Inc. (WBDC) and Tribune Company (Tribune), its ultimate corporate parent, that the broadcast of the commercial for the Nintendo GameBoy E-Reader during the “Pokemon” program does not constitute a program-length commercial. Though WBDC contends that the image appears appeared for just over one second during the commercial, it is well-established that the determination as to whether a particular program is a program-length commercial is not dependent on the duration of the appearance of the program-related product in the commercial announcement. The Commission has stated on numerous occasions that, where a commercial announcement includes a product related to the program in which the commercial is broadcast, then the program is a program-length commercial regardless of the duration of the appearance of the program-related product in the commercial. *UTV of San Francisco, Inc. (KBHK-TV)*, 10 FCC Rcd 10986, 10988 (1995); *see also WPIX, Inc.*, 14 FCC Rcd 9077 (MMB 1999) (commercial for “Spirit of Mickey” home video showing brief image of Donald Duck on cover of video aired during “Quack Pack” program); *Act III Broadcasting License Corp. WUTV(TV)*, 10 FCC Rcd 4957 (1995), *aff’d*, 13 FCC Rcd 10099 (MMB 1997) (commercial for a fast food restaurant promoting a trip to Disney World as a contest prize contained a brief image of Goofy and aired during the program “Goof Troop”). Moreover, we believe that, in the context of the cognitive abilities of young children, there is the potential for confusion between the GameBoy commercial and the “Pokemon” program regardless whether any “Pokemon” character is depicted given the image of a “Pokemon” game card contained in the commercial and the consequent likelihood that children may associate it with the program. Based on these circumstances, where there is a clear potential for confusion in the minds of young children, the Commission’s program-length policy is applicable. *See Id.* at 19506.

Regarding the reasons given for the commercial overages, the fact that both commercial overages at issue here were the result of formats or errors which occurred in the programming supplied by Station WBDC-TV’s national television network does not absolve WBDC of responsibility for the violations. Similarly, the fact that the program-length commercial was inserted into the program by station’s WBDC-TV’s national television network does not relieve WBDC of responsibility for the violation. In this regard, the Commission has consistently held that a licensee’s reliance on a program’s source or producer for compliance with our children’s television rules and policies will not excuse or mitigate violations which do occur. *See, e.g., Max Television of Syracuse, L.P. (WSYT(TV))*, 10 FCC Rcd 8905 (MMB 1995); *Mt. Mansfield Television, Inc. (WCAX-TV)*, 10 FCC Rcd 8797 (MMB 1995); *Boston Celtics Broadcasting*

² To avoid being considered a program-length commercial, commercial matter related to a children’s program must be separated from that program “by intervening and unrelated program material.” *Children’s Television Programming (Recon.)*, 6 FCC Rcd at 5099. To prevent confusion, the Commission “specifically note[d] that intervening commercial matter will not suffice as a separation device.” *Id.* at 5099 n.89.

Limited Partnership (WFXT(TV)), 10 FCC Rcd 6686 (MMB 1995); *WRGB Broadcasting, Inc.*, MMB Admonition dated August 10, 1994. Moreover, to the extent WBDC suggests that the conventional overages resulted from human error, the Commission has repeatedly rejected human error as a basis for excusing violations of the children's television commercial limits. See, e.g. *LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (MMB 1994). Furthermore, corrective actions may have been taken to prevent subsequent violations of the children's television rules and policies, but that, too, does not relieve WBDC of liability for the violations which have occurred. See, e.g., *WHP Television, L.P. (WHP-TV)*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation WTWS(TV)*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc. (KEVN-TV)*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969). However, while we consider any violation of our rules limiting the amount of commercial matter in children's programming to be significant, the violations described in your renewal application appear to have been isolated occurrences. Although we do not rule out more severe sanctions for violations of this nature in the future, we have determined that an admonition is appropriate at this time.

Therefore, based upon the facts and circumstances before us, we ADMONISH you for the violations of the children's television commercial limits rule and policies described in station WBDC-TV's renewal application. We remind you that the Commission expects all commercial television licensees to comply with the limits on commercial matter in children's programming.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Clark Wadlow, Esq.